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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MANUEL CABRERA-ALEJANDRE,  
12 BOP #09376-097,

13 Plaintiff,

14 vs.

15 U.S.A; FRED LAWRENCE, CEO/Warden;  
16 DAVID LUSCHE, Lieutenant; JOHN DOES  
17 1-5; JANE DOES 1-5; LINDSTEDT, Health  
18 Services Administrator; SORIA QUAWITY,  
19 Assoc. Health Service Administrator;  
20 R. MURRELL, Grievance Committee  
21 Member; M. LAKE, Grievance Committee  
22 Member; S. SORIA, Grievance Committee  
23 Member; RIVERA, Supervisor of Unit B/G,

24 Defendants.  
25  
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Civil No. 09-0846 WQH (AJB)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

27 Plaintiff, a federal inmate currently incarcerated at the Federal Correctional Complex in  
28 Petersburg, Virginia and proceeding pro se, has filed a civil action pursuant to *Bivens v. Six  
Unknown Named Federal Narcotics Agents*, 403 U.S. 338 (1971) and the Federal Tort Claims  
Act, 28 U.S.C. § 2671 et seq.<sup>1</sup> Plaintiff claims Defendants acted with deliberate indifference to

<sup>1</sup> “*Bivens* established that compensable injury to a constitutionally protected interest [caused by federal officials alleged to have acted under color of federal law] could be vindicated by a suit for damages invoking the general federal question jurisdiction of the federal courts.” *Butz v. Economou*, 438 U.S. 478, 486 (1978); *Wilkie v. Robbins*, 551 U.S. 537, \_\_\_, 127 S. Ct. 2588, 2597 (2007). “Actions

1 his serious medical needs while he was detained in the San Diego Correctional Facility from July  
 2 2007 through February 2008. (Compl. ¶ 25.) Plaintiff seeks compensatory and punitive  
 3 damages as well as attorney's fees. (*Id.* ¶¶ 39, 46.)

#### 4 I.

#### 5 Failure to Pay Filing Fee or Request IFP Status

6 All parties instituting any civil action, suit or proceeding in any district court of the  
 7 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*  
 8 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only  
 9 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.  
 10 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,  
 11 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has not prepaid the \$350 filing fee required  
 12 to commence a civil action, nor has he submitted a Motion to Proceed IFP. Therefore, the case  
 13 must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

#### 14 II.

#### 15 Conclusion and Order

16 For the reasons set forth above, the Court hereby:


- 17 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
 18 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and
- 19 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:  
 20 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed  
 21 IFP which includes a certified copy of his trust account statement for the 6-month period  
 22 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).<sup>2</sup>

23 \_\_\_\_\_  
 24 under § 1983 and those under *Bivens* are identical save for replacement of a state actor under § 1983 by  
 a federal actor under *Bivens*." *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991).

25 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the  
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be  
 27 subject to the mandatory screening provisions of 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b).  
 28 *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)  
 "not only permits but requires" the court to sua sponte dismiss an *in forma pauperis* complaint that fails  
 to state a claim); *see also Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (discussing sua sponte  
 screening required by 28 U.S.C. § 1915A(b)). Moreover, such a dismissal may be counted as a "strike"  
 against Plaintiff if he requests IFP status in any future civil action filed while he is incarcerated. *See*

1       **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this  
2 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
3 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the  
4 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without  
5 prejudice and without further Order of the Court.

6 DATED: April 29, 2009

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8 **WILLIAM Q. HAYES**  
9 United States District Judge  
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*Andrews*, 493 F.3d at 1052 (under the Prison Litigation Reform Act, "[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]").